

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0365P

Sales Tax

**For the months of November 2003, December 2003, January 2004,
and February 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of monthly sales tax returns for the months of November 2003, December 2003, January 2004, and February 2004.

The taxpayer is a company residing in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer relied on advice from the Department, and, the taxpayer has a good compliance record.

The taxpayer states the taxpayer was filing under an incorrect number throughout 2003. When the taxpayer realized the taxpayer was filing under an incorrect number, the taxpayer applied for a new sales tax ID number. The taxpayer states the Department told the taxpayer to not send in any more payments under the incorrect number and to wait for the new number.

The Department points out the conversation with the Department employee happened three months after the liabilities in question were paid. Thus the conversation with the Department employee is not a factor in the waiver of penalty.

With regard to the compliance record, the Department points out the taxpayer has had numerous errors. The Department feels the taxpayer has a poor compliance record, and therefore, the compliance record is not a factor in the waiver of penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.